

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Review of the Commission's)	MM Docket No. 98-204
Broadcast and Cable)	
Equal Employment Opportunity)	
Rules and Policies)	

**COMMENTS OF
NATIONAL ORGANIZATION FOR WOMEN
NOW LEGAL DEFENSE AND EDUCATION FUND
FEMINIST MAJORITY FOUNDATION
PHILADELPHIA LESBIAN AND GAY TASK FORCE
WOMEN'S INSTITUTE FOR FREEDOM OF THE PRESS**

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SUMMARY

The underrepresentation of women and the widening wage gap between men and women in the broadcast and cable industries highlight the drastic need to further equal opportunity for women within these industries. NOW *et al.* therefore support the Commission's efforts to prohibit discrimination and promote widespread and inclusive outreach to women and minorities.

To advance the Commission's goals of broad and inclusive outreach, NOW *et al.* suggest the Commission expand its proposal and require broadcasters and cable entities to use the Internet as well as more traditional sources to widely disseminate employment information for both part- and full-time positions. Further, to give effect to the notification requirement and avoid inadvertent omission of any segment of the community, the Commission should require on-air announcements informing organizations of their right to request and receive notification of all vacancies. Additionally, the Commission should clarify and quantify the level of participation necessary to fulfill the supplemental outreach activities.

To further the effectiveness of these outreach requirements, the Commission should maintain strong reporting and enforcement requirements. In particular, to advance the Commission's goal of public participation and enforcement, NOW *et al.* suggest the Commission require broadcasters and cable entities prepare annual public file reports that include applicant, interviewee, hire, and recruitment source information. Broadcasters and cable entities should place these public file reports on their own websites as well as on a centrally accessible site to facilitate public access. Further, to promote the implementation of continuous and meaningful EEO programs, the reports submitted to the Commission at the mid-term and license renewal should include a statement of compliance, comprehensive narratives about supplemental and outreach activities, information regarding pending discrimination complaints, and public file

reports covering the previous four years of EEO activity. Moreover, broadcasters and cable entities should keep a small amount of additional information in their records, such as copies of advertisements, documentation of supplemental outreach activities, and the date each job vacancy was filled, to aid in auditing and self-assessment. Moreover, NOW *et al.* support the use of random audits throughout the license term as a supplement to effective reporting requirements and public participation.

Additionally, the Commission cannot and should not extend the small employment unit exemption threshold. Congressional directives in sections 334 and 634 of the Communications Act prohibit any increase in this threshold. Even if the Commission had the authority to raise the threshold, it should not do so as an increase would allow a large number of broadcasters and cable entities to avoid their EEO responsibilities, therefore frustrating the effectiveness of the Commission's EEO rules and policies.

Finally, although not part of the EEO program requirements, NOW *et al.* support the Commission's proposals to retain the Annual Employment Reports (Forms 395-B, 395-A, and 395-M), which provide the primary means for gathering the employment information necessary to perform Congressionally-mandated industry assessment and to determine the effectiveness of the new EEO rule. As both the Commission's proposals and NOW *et al.*'s suggestions are race and gender neutral, no equal protection concerns should impede the implementation of these important and necessary rules.

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The National Organization for Women, NOW Legal Defense and Education Fund, Feminist Majority Foundation, Philadelphia Lesbian and Gay Task Force, and the Women's Institute for Freedom of the Press (“NOW *et al.*”) respectfully submit comments in response to the *Second Notice of Proposed Rule Making* (“*Second NPRM*”) of the Federal Communications Commission (“Commission”) in the above referenced proceeding, released December 21, 2001, concerning equal employment opportunity rules and policies. In this *Second NPRM*, the Commission generally seeks comment on its proposals to modify the equal employment opportunity rule (“EEO policy” or “EEO rule”) in response to the D.C. Circuit opinion declaring certain aspects of the previous rule unconstitutional. *MD/DC/DE Broadcasters Association v. FCC*, 236 F.3d 13, *rehearing den.* 253 F.3d 732 (D.C. Cir. 2001), *pet. for cert. denied*, 122 S.Ct. 920 (2002) (“*Association*”).

NOW *et al.* are dedicated to making legal, political, social and economic change to ensure fairness and justice for women in the workplace and equality in our society. NOW *et al.* are alarmed by recent statistics indicating that broadcast and cable entities consistently overlook women.¹ For instance, a report released by the Annenberg Public Policy Center found that just ten percent of the top executive officers and twelve percent of the board members of media/entertainment companies were women.² The report further determined that “women account for less than one in four news directors nationwide”³ and represent only seventeen percent of television general managers and thirteen percent of radio general managers.⁴

Moreover, in the cable industry, the percentage of full-time female employees in upper-level job categories decreased between 1998 and 1999.⁵ The situation is even worse for women of color, who represent only three percent of senior level positions, nine percent of managers, and eleven percent of professionals in the cable industry.⁶

Not only are women underrepresented in the broadcast and cable industries, but the salary differential between men and women is increasing.⁷ In 1995, full-time female managers in the

¹ See Annenberg Public Policy Center, *Progress or No Room at the Top?: The Role of Women in Telecommunications, Broadcast, Cable and E-Companies* at 2 (2001), available at <http://www.appcpenn.org/reports/2001/index.asp> [hereinafter *Annenberg Report*]; Commissioner Susan Ness, Remarks Before the Annual Meeting of American Women in Radio and Television (Aug. 28, 2000).

² The media/entertainment companies included: AOL/Time Warner, Clear Channel Communications, General Electric, News Corp, USA Networks, Viacom, and Walt Disney Company. *Annenberg Report* at 3-4.

³ *Annenberg Report* at 10. Further, only 20.2% of television news directors are women, and 21.9% of radio news directors are women. Radio-Television News Directors Association & Foundation & Ball State University, *RTNDA/Ball State University Survey of Women & Minorities in Radio & Television News* (2001), available at <http://www.rtna.org/research/womin.shtml>.

⁴ *Annenberg Report* at 10.

⁵ “Among the total full-time employees in upper-level job categories, females decreased from 28.9% to 26.9%.” Federal Communications Commission, *1999 Cable and Multi-Channel Video Program Distributor Employment Report* (2001).

⁶ Women in Cable & Telecommunications Foundation, *Diversity Through Investment: Findings of the Women in Cable & Telecommunications Foundation’s Best Practices Initiative* at 3-4 (2001), available at <http://www.wict.org/foundation/bestpractices/indexnext.html> [hereinafter *Diversity Through Investment*].

⁷ U.S. General Accounting Office, Staff of John D. Dingell, & Staff of Carolyn B. Maloney, *A New Look Through the Glass Ceiling: Where Are the Women?: The Status of Women Management in Ten Selected Industries* at 7-8 (2002) [hereinafter *Where Are the Women*].

communications industry earned \$0.86 for every \$1.00 earned by a full-time male manager, while in 2000, a full-time female manager earned only \$0.73 for every \$1.00 earned by a male.⁸

Women also tend to be clustered in clerical and administrative support, customer service/consumer affairs, and sales areas in the broadcast and cable industries.⁹ For instance, in 2000, close to seventy-five percent of office and clerical workers in the broadcast and cable industries were women.¹⁰ And, while women may hold “executive” or “upper level” positions, job titles may overstate actual levels of participation in strategic or programming decision-making.¹¹ For example, the Annenberg Report found that, of the women executives of major entertainment/media companies, just one woman, less than one percent of all media entertainment executives, held a title denoting the highest level of power within an organization.¹²

Because of the persistent exclusion of women from management positions and the lack of wage and responsibility parity, fairness and equality are absent from the broadcast and cable workforce. Therefore, a drastic need exists for an equal employment opportunity rule that can spur the industries to equality. These comments concentrate on the focus of the Commission’s proposal, outreach for job hiring. However, while outreach is important, it alone cannot address

⁸ *Where Are the Women* at 7. In 1997, women working for multiple video distribution service companies, including cable operators, earned fifteen percent less than the base salaries of men. Women in Cable & Telecommunications Foundation, *Pay Equity: The 15% Gap* (1997), available at <http://www.wict.org/foundation/salary/15percent.html> (last visited Apr. 10, 2002) [hereinafter *15% Gap*].

⁹ *15% Gap*. See also U.S. Equal Employment Opportunity Commission, *2000 EEO-1 Aggregate Report, SIC 483: Radio and Television Broadcasting* (2002), available at <http://www.eeoc.gov/stats/jobpat/2000/sic3/483.html>; U.S. Equal Employment Opportunity Commission, *2000 EEO-1 Aggregate Report, SIC 484: Cable and Other Pay TV Services* (2002), available at <http://www.eeoc.gov/stats/jobpat/2000/sic3/484.html>.

¹⁰ U.S. Equal Employment Opportunity Commission, *2000 EEO-1 Aggregate Report, SIC 484: Cable and Other Pay TV Services* (2002), available at <http://www.eeoc.gov/stats/jobpat/2000/sic3/484.html>.

¹¹ *Annenberg Report* at 2, 5. See also *Where Are the Women* at 9; Jennifer L. Pozner, *Women Have Not Taken Over the News: TV Guide should look at the numbers before they cheer journalistic gender parity*, FAIRNESS AND ACCURACY IN REPORTING, January/February 2000, available at <http://www.fair.org/extra/0001/tvguide.html> (last visited Apr. 10, 2002).

¹² These “‘Clout Titles’ include Chairman, Chief Executive Officer, Vice Chairman, President, Chief Operating Officer, Senior Executive Vice President and Executive Vice President. Executives with these titles have the highest level of power within an organization.” *Annenberg Report* at 5. See also *Diversity Through Investment* at 4.

fairness and equality. Thus, NOW *et al.* look forward to working with the Commission to develop creative solutions that will begin to reverse the alarming trend of exclusion.

I. THE COMMISSION SHOULD MODIFY AND CLARIFY ITS OUTREACH PROPOSAL REQUIREMENTS TO FURTHER ENSURE BROAD OUTREACH

The Commission has proposed a three-pronged outreach program requiring: (1) wide dissemination of information concerning each full-time job vacancy (“dissemination requirement”); (2) notification of each full-time job vacancy to recruitment organizations that have requested such notice (“notification requirement”); and (3) completion of two or four (depending on the number of station employees) of thirteen supplemental recruitment activities (“supplemental activities requirement”).¹³ As Commissioner Copps stated, the Commission’s proposal is a “port of embarkation” for developing a record and crafting effective rules.¹⁴ NOW *et al.* agree that the Commission’s latest outreach proposal discourages discrimination and promotes widespread recruitment, but some modifications are necessary to effectively “reach out to all segments of the community in filling vacancies.”¹⁵

Thus, to further the Commission’s outreach goals, NOW *et al.* suggest that the Commission: (1) require the use of the Internet along with other sources to disseminate both part-time and full-time vacancy information; (2) require on-air announcements informing organizations of their right to request and receive notification of both part-time and full-time vacancies; and, (3) clarify the level of participation necessary for the supplemental activities requirement. The Commission’s anti-discrimination and outreach policies, including NOW *et al.*’s proposed modifications, are *essential* to avoid replication of a homogenous workforce

¹³ Review of the Commission’s Broadcast and Cable Equal Employment Opportunity Rules and Policies, *Second Notice of Proposed Rulemaking*, FCC 01-363 at 5-6 ¶16 (released December 21, 2001) (“*Second NPRM*”).

¹⁴ *Second NPRM*, Separate Statement of Commissioner Michael J. Copps.

¹⁵ *Second NPRM* at 5 ¶ 15.

through insular recruitment and hiring practices,¹⁶ and, therefore, impose no unnecessary burdens on broadcasters or cable entities.

Neither the proposed rules nor *NOW et al.*'s suggestions trigger strict scrutiny equal protection analysis as they are race and gender-neutral.¹⁷ In fact, the Commission's proposed outreach program is based on Option A of the previous rule, which the court affirmed on constitutional and statutory grounds.¹⁸

A. The Commission Should Require Broadcasters and Cable Operators to Implement Varied Broad Outreach Practices for Full and Part-Time Vacancies

The Commission has proposed to continue to require that broadcasters and cable entities recruit for all full-time vacancies through sources reasonably calculated to reach the entire community.¹⁹ As in the previous version of the rules, these proposed outreach requirements do not apply to temporary hires or internal promotions, and broadcasters and cable entities need only “substantially comply” with the requirements to recruit for part-time vacancies.²⁰

NOW et al. support the Commission's broad outreach and wide dissemination goals identified in Prong 1 (“dissemination requirement”).²¹ However, without requiring use of multiple recruitment methods, including use of the Internet, for dissemination of both full and part-time positions, the Commission may fail to reach its worthwhile goals.

¹⁶ *Second NPRM* at 5 ¶ 15.

¹⁷ In light of recent court decisions in *Lutheran Church-Missouri Synod v. FCC*, 141 F.3d 344 (D.C. Cir. 1998), *pet. for reh'g denied*, 154 F.3d 487, *pet. for reh'g en banc denied*, 154 F.3d 494 (D.C. 1998) (“*Lutheran Church*”) and *MD/DC/DE Broadcasters Association v. FCC*, 236 F.3d 13, *rehearing den.* 253 F.3d 732 (D.C. Cir. 2001), *pet. for cert. denied*, 122 S.Ct. 920 (2002) (“*Association*”), the Commission expressed concern with equal protection and due process constitutional strictures. *Second NPRM* at 8 ¶ 21. In both *Lutheran Church* and *Association*, the EEO programs held to be unconstitutional involved race and gender-based classifications or reporting requirements, neither of which are present in the Commission's or *NOW et al.*'s proposal. See *Association*, 236 F.3d at 17; *Lutheran Church*, 141 F.3d at 350-51.

¹⁸ See *Association*, 236 F.3d at 18-19; *Second NPRM* at 5-6 ¶ 16.

¹⁹ *Second NPRM* at 8 ¶ 23.

²⁰ *Second NPRM* at 8-9 ¶ 24.

²¹ *Second NPRM* at 5-6 ¶ 16, 8 ¶ 23.

1. The Commission Should Require Broadcasters and Cable Operators Use the Internet Along With More Traditional Outreach Methods to Disseminate Vacancy Information

The Commission has requested comment on the use of the Internet for recruitment purposes, including whether the Internet could be the sole dissemination vehicle for vacancy information.²² While NOW *et al.* agree that the Internet is a “valuable recruitment resource,”²³ the Internet should not be the only recruitment tool used by broadcasters and cable entities, who should require broadcasters and cable entities post job vacancies on both their own web sites and on a centralized, searchable web site in addition to using more traditional recruitment methods.

According to the U.S. Department of Commerce, nearly twenty million Americans, or seven and a half percent of the population, use the Internet to search for jobs.²⁴ The number of Americans seeking jobs via the Internet increased by one million between 2000 and 2001,²⁵ and Internet usage in the United States is growing at a rate of two million new Internet users per month.²⁶ Nonetheless, forty-six percent of Americans do not use or access the Internet.²⁷ Thus, while broadcasters and cable entities should tap the Internet’s potential to reach a broad number of potential job applicants, to avoid exclusion of almost half of Americans, they cannot rely on the Internet as the sole dissemination vehicle for job vacancy information.

At a minimum, the Commission should require that broadcasters and cable entities post job vacancy notifications on their own web sites, which most already maintain and frequently

²² *Second NPRM* at 9 ¶ 26.

²³ *Id.*

²⁴ National Telecommunications and Information Administration & Economics and Statistics Administration, U.S. Department of Commerce, *A Nation Online: How Americans Are Expanding Their Use of the Internet* at 30 (2002), available at <http://www.esa.doc.gov/508/esa/USEconomy.htm> [hereinafter *Commerce Report*].

²⁵ *Commerce Report* at 30.

²⁶ *Commerce Report* at 1.

²⁷ *Id.* Varied recruitment mechanisms are more likely to achieve broader outreach as men are the primary users of the Internet in the workplace. “Even though both men and women have computer and Internet access at work, women trail in their use of Internet technology in the workplace and a digital divide between men and women still exists.” Steven Bonisteel, *Women Surfers Rule in the Roost but Lag in the Workplace*, NEWSBYTES.COM, Mar. 13, 2002, at <http://www.washtech.com/news/media/15640-1.html> (last visited Apr. 3, 2002).

update with news and employment information.²⁸ For the Internet to be an effective outreach tool, however, the public must have awareness of and efficient access to the job posting information.²⁹ Absent known central coordination of this vacancy information, job seekers are faced with laboriously searching for job postings station by station. Thus, to promote efficient, useful Internet outreach, the Commission should require that broadcasters and cable entities post job vacancies on the broadcaster's or cable entity's state or national association's web site or other central, publicly accessible web site intended to serve as a source for job listings in addition to posting on their own web sites.³⁰

²⁸ According to the RTNDA/Ball State University Radio and Television Web Survey, ninety-one percent of TV stations and seventy-five percent of radio stations operate web sites. Radio-Television News Directors Association & Foundation & Ball State University, *RTNDA/Ball State University Radio and Television Web Survey* (2001), available at <http://www.rtna.org/technology/web.shtml#survey> [hereinafter *Web Survey*]. Ninety-one percent of TV stations post local news and seventy percent run images on their sites. *Web Survey*. And, ninety-one percent of radio news directors and eighty-one percent of TV news directors do not view maintaining their web sites as a drain on resources. *Web Survey*.

The fact that many entities already voluntarily place vacancy listings on their web sites evidences the prudence of and minimal burden, if any, of such job postings. For instance, New York affiliates post their job vacancies. See WNBC at <http://www.wnbc.com/wnbc/1169493/detail.html>, WABC at <http://abclocal.go.com/wabc/aboutus/jobs.html>, WCBS at <http://cbsnewyork.com/jobs/>, noting, "If you're interested in a job at CBS 2 then this is the place to look," and WNYW (FOX) at <http://www.fox5ny.com/> (click on Job Opportunities) (all sites last visited Apr. 10, 2002). Tampa affiliates also post or provide a link to their vacancies. See WFLA (NBC) at <http://wfla.tbo.com/jobs/jobs.htm>; WFTS (ABC) at <http://www.tampabaylive.com/employment/index.shtml> (click on link to Jobs at ABC 28); WTSP (CBS) at <http://www.wtsp.com/jobs/index.htm>; and WTVT (FOX) at <http://www.wtvt.com/> (click on Contact 13, then click on Job Opportunities) (all sites last visited Apr. 10, 2002). Further, the National Broadcasters Association (NAB) provides a database of job postings at <http://www.nab.org/bcc/program/searchjobpostings.asp> (last visited Apr. 10, 2002). Cable entities also regularly post job listings on their web sites. Cox Communications provides a searchable database of job listings at <http://www.cox.com/CoxCareer/search.asp> (last visited Apr. 10, 2002), and AOL Time Warner provides a Career Cart account for those interested in exploring current job opportunities at <http://wss.alexus.com/wss/start.asp?application=jss&group=twi&function=TimeWarner&subfunction=Welcome> (last visited Apr. 10, 2002).

²⁹ In 2000, when the Commission decided that Internet job banks could not be relied upon exclusively to achieve broad outreach, it acknowledged, "[I]n view of their newness [the BEDA job bank and broadcast association] websites are not well known as a repository of job advertisements for prospective applicants." Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies and Termination of the EEO Streamlining Proceeding, *Report and Order in MM Docket Nos. 98-204 and 96-16*, 15 FCC Rcd 2329, 2368-69 ¶ 86 (2000), *recon. denied* 15 FCC Rcd 22548 (2000) [hereinafter *Report and Order*].

³⁰ For example, NAB already provides a database of job postings at their centrally accessible web site, <http://www.nab.org/bcc/program/searchjobpostings.asp>, and the National Association of Minorities in Communications (NAMIC) provides a job bank at http://www.namic.com/info_frame.html (click on Job Bank).

Finally, because almost half of Americans do not access the Internet³¹ and because job seekers often rely on multiple sources to find jobs, NOW *et al.* urge the Commission to also require dissemination of vacancy information through other more traditional outlets such as newspapers, trade publications, or newsletters.³² Use of these varied sources coupled with individual and centralized web site postings is a more comprehensive approach that will further advance the Commission's broad outreach objectives in today's evolving marketplace.

2. The Commission Should Require Broadcasters and Cable Operators to Widely Disseminate Vacancy Information for Part-Time Positions

The Commission's current proposal only requires that broadcasters and cable entities "substantially comply" with the requirement to recruit for part-time vacancies.³³ The Commission offers no guidance as to what actions constitute "substantial compliance" and merely acknowledges that it is continuing its policy reflected in the 2000 *Report and Order*.³⁴ The *Report and Order* only repeats the "substantial compliance" language and states that the Commission expects broadcasters to recruit for part-time positions, but that it does not focus on part-time positions in EEO program review.³⁵ Previous Commission rulings have echoed this

³¹ *Commerce Report* at 1.

³² "[T]he daily newspaper is still the dominant player in local media and local classified opportunities." Press Release, The Media Audit, Newspaper Classified Readership Drops; Web Job Sites Claim 25% Market Share (Jan. 29, 2002), available at <http://www.themediiaudit.com/classified.htm>. Also, newspapers reach the majority of the American public. Research and Readership Department, Newspaper Association of America, *Total Daily and Sunday Newspaper Readership Trends: Top 50 Markets 1998 to Present* (2001), at <http://www.naa.org/artpage.cfm?AID=1614&SID=75> (last visited Apr. 10, 2002). Further, *Broadcasting and Cable*, an industry trade publication, reaches 36,000 people weekly in the broadcasting and cable TV, radio, satellite, and interactive multimedia industries. Reed Business Information, *Broadcasting & Cable Profile*, at <http://www.cahners.com/index.asp?layout=theListProfile&theListID=517&groupID=28&industryid=28> (last visited Apr. 10, 2002).

³³ *Second NPRM* at 8-9 ¶ 24.

³⁴ *Second NPRM* at 8-9 ¶ 24 (citing *Report and Order*, 15 FCC Rcd at 2375-76, ¶ 110).

³⁵ *Report and Order*, 15 FCC Rcd at 2375-76 ¶ 110.

policy, and the Commission has generally declined to take EEO enforcement action with respect to part-time recruitment.³⁶

The failure to require complete compliance with outreach requirements for all part-time positions is problematic for three reasons. First, part-time positions constitute a significant portion of the total workforce at most broadcast stations:³⁷ thirty-one percent of radio news staffs and thirteen percent of TV news staffs.³⁸ And, during times of downsizing, many licensees may economize by hiring more part-time employees than usual, particularly for entry-level positions.³⁹ Finally, as the National Association of Broadcasters (NAB) has stated, part-time positions often provide unseasoned applicants with the opportunity to gain relevant experience and entry into the broadcast industry.⁴⁰

Consequently, NOW *et al.* ask the Commission to extend its proposed outreach requirements to part-time vacancies to promote equal employment opportunities in crucial entry-

³⁶ See, e.g., *Enterprise Media of Toledo, L.P.*, 12 FCC Rcd 3920, 3923-24 ¶ 11 (1997) (“[O]ur primary focus is on recruitment efforts for full-time vacancies when analyzing EEO programs.”); *WFSQ (FM)*, 7 FCC Rcd 6045, 6046 ¶ 8 (1992) (“Although the Commission requires that broadcasters provide equal employment opportunity for both full and part-time positions, we primarily focus on full-time hires when analyzing a station’s EEO record.”). In one case, the Commission only reviewed data as to full-time positions even though evidence as to part-time positions was presented by the licensee. *Regents of New Mexico State University*, 11 FCC Rcd 6605, 6607-08 ¶¶ 10-12 (1996). In another proceeding, the Commission did not “[c]ount[] those positions which the licensee identifie[d] as part-time or temporary . . .” in its analysis of a station’s EEO record. *Application of Certain Broadcast Stations Serving Communities in the Miami, Florida Area*, 5 FCC Rcd 4893, 4896 ¶ 29, 4901 n.24 (1990).

³⁷ Amendment of Part 73 of the Commission’s Rules Concerning Equal Employment Opportunity in the Broadcast Radio and Television Services, *Report and Order*, 2 FCC Rcd 3967, 3970 ¶ 21 (1987), *clarification and suspension of effective date denied* 4 FCC Rcd 1715 (1989).

³⁸ See Radio-Television News Directors Association & Foundation & Ball State University, *RTNDA/Ball State University 2000 News & Staffing Survey* (2001), available at <http://www.rtna.org/research/staff.shtml> [hereinafter *News & Staffing Survey*]. Further, in 2001, seventy-one percent of those over the age of twenty employed in part-time positions were women. Bureau of Labor Statistics, Department of Labor, *Annual Averages – Household Data: Employed and unemployed full- and part-time workers by age, sex, and race* (2002), available at <http://www.bls.gov/cps/cpsaat8.pdf> (last visited Apr. 11, 2002).

³⁹ *Comments of the National Hispanic Media Coalition In the Matter of Implementation of Commission’s Equal Employment Opportunity Rules*, MM Docket No. 94-34, at 3 (1994) [hereinafter *Comments of NHMC*].

⁴⁰ “[P]art-time employment is a good training ground for the broadcast industry. Individuals who work part-time often advance to fulltime status, at either their current stations or other broadcast outlets. The Commission’s policies should therefore support stations’ hiring of part-time workers.” *Comments of the National Association of Broadcasters In the Matter of Implementation of Commission’s Equal Employment Opportunity Rules*, MM Docket No. 94-34, at 35 (1994) (requesting minimal paperwork on part-time employees to encourage part-time hiring practices). Further, the National Hispanic Media Coalition asserted, “Many of these part-time jobs are for entry-level positions.” *Comments of NHMC* at 3.

level positions that constitute almost one-third of radio and over ten percent of television staff. Because broadcasters and cable entities would already have to implement an outreach program under the Commission's proposal for full-time positions, they should be able to easily follow those same, established procedures for part-time vacancies as well.

B. The Commission Should Require Broadcasters and Cable Operators to Make On-Air Announcements Informing Organizations of Their Right to Request and Receive Job Vacancy Information

In addition to requiring broadcasters and cable entities widely disseminate information regarding job vacancies, Prong 2 of the Commission's outreach proposal continues to require that broadcasters and cable entities provide "notification of full-time job vacancies to organizations involved in assisting job seekers upon request by such organizations" ("notification requirement").⁴¹ This notification requirement, which is designed to avoid inadvertent omission of any segment of the community,⁴² will only be effective if organizations are aware of their right to request and receive vacancy notifications. Thus, *NOW et al.* suggest that the Commission require broadcasters and cable entities air frequent announcements, reasonably calculated to reach a substantial portion of the community, which inform the public of broadcasters' and cable entities' obligation to provide notice of job vacancies to organizations upon request.⁴³

⁴¹ *Second NPRM* at 9-10 ¶ 27.

⁴² *Id.*

⁴³ For example, station KGO, ABC's San Francisco affiliate, already voluntarily ran on-air announcements requesting that organizations interested in being added to its mailing list for job vacancies contact the station. The on-air announcements ran 11 times during the period of July 17-30, 2000 during a variety of time slots. The wording shown in the on-air announcements was as follows: "KGO-TV is an equal opportunity employer. We would like to widely publicize our job opportunities. Any organization that regularly distributes employment information to job seekers or that refers candidates to employers may ask to be put on our mailing list to receive information about job vacancies. For further information, please contact the Human Resources Department, 900 Front Street, San Francisco, CA 94111." Station KGO's web site at <http://abclocal.go.com/kgo/aboutus/eeo.html> (last visited Apr. 10, 2002). Also, in the 2000 *Report and Order*, the Commission stated its expectation that "broadcasters [] make reasonable efforts to publicize the notification requirements in their communities so that qualifying groups are able to learn of the new procedure." The Commission suggested that "such efforts could take the form of, for example, announcements on their stations or newspaper advertisements." *Report and Order*, 15

Also, for the same reasons discussed in Section I. A. 2 of NOW *et al.*'s comments, the Commission should require that broadcasters and cable entities make announcements and notify requesting organizations of both part- and full-time vacancies. Without the inclusion of all part-time positions, the Commission will not achieve its laudable goal of avoiding exclusion of a segment of the community, namely, part-time workers.⁴⁴

C. The Commission Should Clarify and Quantify the Level of Participation Required Under the Supplemental Activities Requirement

Along with the dissemination and notification components, Prong 3 of the Commission's outreach program is intended to "encourage outreach to persons who may not yet be aware of the opportunities available in broadcasting or cable or have not yet acquired the experience to compete for current vacancies."⁴⁵ To that end, the Commission has proposed to continue to require broadcasters and cable entities to perform a specified number of outreach activities selected from a menu of thirteen options ("supplemental activities requirement").⁴⁶ Depending on the number of employees, the Commission's proposal requires that broadcasters complete two or four activities over a two-year period and that cable entities complete one or two activities annually.⁴⁷ Broadcasters and cable entities may perform the menu options on a joint basis as long as "each employment unit seeking credit . . . had some degree of participation in the activity."⁴⁸

NOW *et al.* support continuing the previously-mandated number of supplemental activities and threshold levels. However, absent further clarification and quantification of the necessary level of participation for the completion of the supplemental activities requirement,

FCC Rcd at 2371 ¶ 95. Further, the Commission already requires that broadcasters make a similar announcement regarding upcoming renewals. *See* FCC Broadcast Radio Services, 47 C.F.R. §73.3580(c) (2002).

⁴⁴ *See Second NPRM* at 9-10 ¶ 27.

⁴⁵ *Second NPRM* at 10 ¶ 28.

⁴⁶ *Second NPRM* at 10-11 ¶¶ 28-31.

⁴⁷ *Second NPRM* at 5-6 ¶ 16, 6 ¶ 17, 10 ¶ 29.

⁴⁸ *Second NPRM* at 11 ¶ 31.

broadcasters and cable entities may be able to avoid their responsibilities and the goals of the EEO rule. For instance, a broadcaster may claim completion of the menu option of "participation in job banks, Internet programs, and other programs designed to promote outreach generally"⁴⁹ by posting one vacancy notice in one unfrequented job bank. Similarly, a broadcaster may affirm that it has completed the menu option of "participation in scholarship programs designed to assist students interested in pursuing a career in broadcasting"⁵⁰ by providing one job vacancy notice to a school of journalism or college placement office.

In prior EEO proceedings, broadcasters have commented on the need for further guidance regarding the amount of participation necessary for satisfactory completion of EEO recruitment requirements.⁵¹ Thus, *NOW et al.* request that the Commission provide detailed guidance regarding the level of participation required for satisfactory completion of the menu options. For instance, the Commission's guidance could include a minimum number of hours per menu item or outline specific steps for completion of the menu requirements,⁵² thus providing the necessary, crucial quantification and alleviating any uncertainty of broadcasters or cable entities in the adequacy of their activities.

Additional guidance could also include examples of adequate participation like those the Commission provided with respect to joint implementation of the menu requirements.⁵³ There, the Commission has suggested that merely lending a station's name or providing money would not be sufficient joint participation in a job fair and that employment units may not claim joint

⁴⁹ *Second NPRM* at 10-11 ¶ 30.

⁵⁰ *Id.*

⁵¹ As the Commission also noted in the 1998 *NPRM*, "Some broadcasters have complained in the past that our EEO rules did not provide enough guidance regarding what steps they had to take to ensure that they were in compliance." Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies and Termination of the EEO Streamlining Proceeding, *Notice of Proposed Rulemaking in MM Docket Nos. 98-240 and 96-16*, 13 FCC Rcd 23004, 23027-28 ¶ 65 (1998), *order* 15 FCC Rcd 2329 (2000), *recon. denied* 15 FCC Rcd 22548 (2000) [hereinafter *NPRM*].

⁵² *See NPRM*, 13 FCC Rcd at 23027-28 ¶ 65.

⁵³ *Second NPRM* at 11 ¶ 31.

credit for a scholarship program of their corporate parent.⁵⁴ At a minimum, the Commission should apply those same policies used in evaluating the level of participation required for joint completion of menu options to the independent completion of those activities.⁵⁵ NOW *et al.*'s suggested guidance would still preserve flexibility in the choice of recruitment activity and would provide structure, and, thus, increased compliance certainty, ultimately furthering broad outreach to job candidates who may otherwise be unaware of opportunities.⁵⁶

II. REPORTING AND RECORDKEEPING OF RECRUITING AND HIRING EFFORTS ARE ESSENTIAL TO ENSURING EFFECTIVE OUTREACH

Reporting and recordkeeping requirements are essential to ensuring that broadcasters and cable entities comply with outreach and other EEO requirements. Under the Commission's proposal, broadcasters and cable entities would place certain information regarding hires and supplemental activities in their public files and on their web sites.⁵⁷ Television stations and larger radio stations would also submit a Mid-term Report four years into the license term and all stations would submit a Program Report at license renewal.⁵⁸ In addition, all broadcast employment units and cable entities would retain certain information for inspection purposes.⁵⁹ Finally, the Commission seeks comment on the use of Commission audits as a supplement or alternative to reporting.⁶⁰

NOW *et al.* generally support the Commission's proposals. However, NOW *et al.* are concerned that the proposals omit certain information necessary for use by the public, the Commission, and broadcasters and cable entities themselves to ensure broader outreach. Thus, NOW *et al.* urge the Commission to require that broadcasters and cable entities include

⁵⁴ *Id.*

⁵⁵ *See id.*

⁵⁶ *Second NPRM* at 11 ¶ 30.

⁵⁷ *Second NPRM* at 12 ¶ 36.

⁵⁸ *Second NPRM* at 13 ¶ 42, 14 ¶ 46.

⁵⁹ *Second NPRM* at 11 ¶ 32.

⁶⁰ *Second NPRM* at 14 ¶ 43.

information regarding applicants, interviewees, and hires in their public file reports. To make it easier for the public to access this information, the public file reports should be posted not only on the stations' or entities' web sites, but in an easily accessible central location. In addition, to ensure that licensees have the incentive to engage in outreach throughout their eight year license terms, they should include information covering the previous four years with mid-term and license renewals. And, certain additional information should be kept by licensees even though not routinely submitted to the Commission. Finally, random audits are a useful supplement to but not a substitute for reporting and public participation. None of the reporting and recordkeeping proposed by the Commission or NOW *et al.* implicate race or gender, and thus they do not present any equal protection concerns.

A. Broadcasters and Cable Entities Should Include Applicant, Interviewee, and Hiring Information in Their EEO Public File Report

The Commission proposes that broadcasters place in their public file an annual report that includes: (1) all full-time jobs filled; (2) the recruitment sources used to fill those vacancies; (3) the address, contact person, and telephone number of each recruitment source; and, (4) a description of any supplemental initiatives implemented.⁶¹ This proposal is similar to requirements under the former Option A. However, it leaves out Option A's third and fourth requirements: "(iii) the recruitment source that referred the hiree for each full-time vacancy . . . [and] (iv) data reflecting the total number of persons interviewed for full-time vacancies . . . and the total number of interviewees referred by each recruitment source utilized"⁶² The Commission states that the annual public file report "is useful as a means of facilitating public

⁶¹ *Second NPRM* at 12 ¶ 36.

⁶² FCC Broadcast Radio Services, 47 C.F.R. § 73.2080(c)(6)(iii)-(iv) (2002).

input into the EEO process”⁶³ and “will be useful to broadcasters by enabling them to identify and correct any problems in their programs in an expeditious manner.”⁶⁴

Although NOW *et al.* agree that the annual public file report is an important tool, additional information regarding recruitment sources and interviewees must be included for the public file report to be effective in ensuring broad outreach, public enforcement, and self-assessment. Without requiring identification of the recruitment source that referred the person hired for each vacancy, as previously required under Option A, broadcasters could hire exclusively from a single or small number of sources without detection. For example, the annual public file report of an Ohio station shows that the station utilized nineteen recruitment sources but hired exclusively from employee referrals with only one exception.⁶⁵

Moreover, if broadcasters need not report the number of people interviewed for each vacancy, as previously required under Option A, neither the public nor the Commission will be able to assess if broadcasters’ outreach efforts extend to interviewing. For instance, without public file information, the public could not have discovered that a station in Georgia conducted only twenty-one interviews for thirteen job vacancies.⁶⁶ Most importantly, if no longer required to report the number of interviewees referred by each recruitment source, assessing whether recruitment sources have been productive will be impossible. For example, public file information for a station in Minnesota revealed the ineffectiveness of certain recruitment sources, as only three of eighty-four listed recruitment sources referred more than one

⁶³ *Second NPRM* at 13 ¶ 38.

⁶⁴ *Second NPRM* at 13 ¶ 39.

⁶⁵ Station WLWT EEO Public File Report, at <http://www.channelcincinnati.com/station/eo.pdf> (last visited Apr. 11, 2002). Also, public file information showed that a station in Kansas used various recruitment sources but actually filled seventeen of twenty-five positions through internal sources or employee and business referrals.

Station KSNW EEO Public File Report, at http://www.ksn.com/eo/eo_ksnw_jvf.html (last visited Apr. 11, 2002).

⁶⁶ Station WGXA EEO Public File Report, at <http://www.fox24.com/eo.htm> (last visited Apr. 11, 2002).

interviewee.⁶⁷ For the same reasons, annual public file reports should also include the number of applicants referred by each source.

Thus, NOW *et al.* urge the Commission to readopt the requirements under the former Option A in their entirety with the addition of the number of applicants referred by each source for all positions, both full- and part-time.⁶⁸ This proposal raises no constitutional problem as the Court already found Option A constitutional.⁶⁹ Furthermore, readoption of Option A in full for broadcasters would be consistent with the Commission's proposal "to readopt the reporting and enforcement provisions adopted in the *Report and Order*" for cable entities.⁷⁰

Reporting the applicant, interview, and hiring information for all positions will not impose an unreasonable burden on broadcasters or cable entities. The Commission has acknowledged that "[it does] not believe that the annual public file report is unduly burdensome."⁷¹ Further, the cable industry did not find the prior EEO reporting requirements to be unduly burdensome.⁷² The fact that "no cable entity or representative thereof [sought]

⁶⁷ Of station KTTC's eighty-four recruitment sources, one source referred eight interviewees, one source referred four interviewees, one source referred two interviewees, and five sources referred one interviewee. Station KTTC EEO Public File Report, at <http://www.kttc.com/eeoreport.html> (last visited Apr. 11, 2002). Also, station KATU's public file report reveals that of forty-five recruitment sources, one source referred eight interviewees, one source referred five interviewees and three sources referred one interviewee. Station KATU EEO Public File Report, at <http://www.fsci.com/jobs/publicfilereports/katu2000.pdf> (last visited Apr. 11, 2002).

⁶⁸ For the importance of part-time recruitment, see *supra* Section I. A. 2.

⁶⁹ *Association*, 236 F.3d at 18-19. See also *Second NPRM* at 5-6 ¶ 16.

⁷⁰ *Second NPRM* at 14 ¶ 45. In general, NOW *et al.* believe that the Commission should adopt the same public file requirements for cable entities as broadcasters. Thus, the proposal to readopt Option A for cable entities should be amended to also include the number of applicants referred by each source.

⁷¹ *Second NPRM* at 13 ¶ 40. The Commission stated its belief that "the public file report and the statement of compliance are necessary for the proper administration of [the EEO] Rule, and [that the Commission did] not believe that they impose any unreasonable burden on broadcasters." Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies and Termination of the EEO Streamlining Proceeding, *Partial Reconsideration and Clarification*, 15 FCC Rcd 22548, 22557 ¶ 31 (2000) [hereinafter "*Recon*"]. See also *Report and Order*, 15 FCC Rcd at 2379 ¶ 122.

⁷² National Cable Television Association (NCTA) president Robert Sachs stated publicly that the cable industry "did not find [the EEO requirements] burdensome; they were eminently reasonable." Marianne Paskowski, *A Blow to Diversity*, MULTICHANNEL NEWS, January 22, 2001, at 56. Further, in an amicus brief, NCTA supported the Commission's previous EEO rules, stating that "the cable industry [does not] believe that the rules are unduly burdensome In reality, the reporting requirements have been minimally increased in some areas, significantly reduced in others, and are comparable to other reporting requirements imposed in other areas of broadcast and cable

reconsideration of the cable EEO rules” in the earlier proceeding demonstrates that the requirements do not impose an unreasonable burden.⁷³ Because under the current proposal broadcasters and cable entities would have to maintain some of this information in their records in any case,⁷⁴ simply requiring them to place this information in their public files would entail little additional work.

B. Broadcasters and Cable Entities Should Post Their Annual Public File Reports on Their Web Sites and a Central Web Site for Easier Public Access

Recognizing the importance of the “[community’s] role in monitoring broadcaster compliance with [the] EEO Rule,”⁷⁵ the Commission proposes to retain the requirement that broadcasters and cable entities place their annual public file reports on their web sites.⁷⁶ NOW *et al.* strongly support this requirement.

However, even with the postings on individual web sites, the reports would not be readily accessible to members of the public who want to assess trends or make comparisons among stations or entities. To retrieve this data, the public would need to laboriously search station by station. Thus, NOW *et al.* urge the Commission to require that licensees place their annual public file reports or a link to each report on a central web site, such as that of the Commission. If the EEO public file reports were available on the Commission’s site, the public would have easier access to these reports and would be able to better assist the Commission in monitoring compliance with EEO provisions.

Posting the contents of the public file on individual web sites places no unreasonable burden on employment units. In fact, broadcasters have failed to document any difficulties or

operations.” Brief Amicus Curiae on Behalf of Radio One, *et al.*, at 5, *MD/DC/DE Broadcasters Association v. FCC*, 236 F.3d 13 (D.C. Cir. 2001) (Nos. 00-1094, 00-1198).

⁷³ *Recon*, 15 FCC Rcd at 22549 ¶ 2.

⁷⁴ *See infra* Section III. D.

⁷⁵ *Report and Order*, 15 FCC Rcd at 2379 ¶ 123.

⁷⁶ *Second NPRM* at 12 ¶36. *See Report and Order*, 15 FCC Rcd at 2380 ¶ 124.

costs created by the posting requirement.⁷⁷ And, because each employment unit must compile the information for its public file anyway and most stations already maintain web sites,⁷⁸ the additional step of posting the report to a web site once a year is insignificant.⁷⁹

Likewise posting the reports on a central web site should not impose an unreasonable burden. The Commission has been posting stations' Statements of Compliance and Program Reports on the Commission web site⁸⁰ and continues to perform a similar function by posting and providing a searchable database for broadcasters' Children's Television Programming Reports.⁸¹ Similarly, the Commission's web site hosts a vast array of information about broadcast stations' ownership, antenna location, engineering and applications.⁸² Thus, the Commission should not face any insurmountable problems posting the annual public file reports.

⁷⁷ *Recon*, 15 FCC Rcd at 22558 ¶ 33.

⁷⁸ Ninety-one percent of all TV stations have web sites, and seventy-five percent of all radio stations have web sites. *Web Survey*. Further, the posting requirement will only apply to those broadcasters and cable entities that have web sites. See *Second NPRM* at 12 ¶ 36.

⁷⁹ Radio stations employ, on average, 2 staffers to maintain their web sites, while TV stations employ, on average, 2.3 staffers to maintain their sites. *Web Survey*. With these staffs, broadcasters should have no difficulty posting one report once a year. And, despite the suspension of the public file posting requirement, some stations, like WLPA, WROZ, and WHBO, still post their public file reports. Stations WLPA, WROZ, and WHBO EEO Public File Report (4/18/00-3/31/01) is at http://www.hallradio.com/pfiles/wlpa_public_file.htm (last visited Apr. 11, 2002).

⁸⁰ The Commission provides an EEO Filing Search at http://svartifoss2.fcc.gov/prod/cdb/pubacc/prod/eo_search.htm (last visited Apr. 11, 2002).

⁸¹ See Extension of the Filing Requirements for Children's Television Programming Reports, *Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 22921, 22922-23 ¶ 4 (2000); Policies and Rules Concerning Children's Television Programming, *Report and Order*, 11 FCC Rcd 10660 (1996). The searchable database of broadcasters' Children's Television Programming Reports is at <http://gullfoss2.fcc.gov/prod/kidvid/prod/query1.htm> (last visited Apr. 11, 2002).

⁸² The Commission places links to web pages which provide the ability to search and retrieve information from FCC Mass Media Bureau databases for AM, FM, TV, LPTV, and DTV broadcast stations at http://svartifoss2.fcc.gov/prod/cdb/pubacc/prod/cdb_pa.htm (last visited Apr. 11, 2002).

C. At the Mid-term and License Renewal, Broadcasters Should File the Broadcast Equal Employment Opportunity Program Report Covering the Broadcaster's EEO Activities for the Previous Four Years to Encourage Outreach Compliance Throughout the Entire License Term

The Commission proposes to eliminate the requirement that stations file Statements of Compliance every two years.⁸³ However, it proposes to readopt the previous requirements that both television stations with five or more full-time employees and radio stations with more than ten full-time employees be subject to mid-term review.⁸⁴ The proposed Mid-term Report (FCC Form 397) consists of a statement certifying compliance with the EEO rule and a copy of the licensee's most recent EEO public file report.⁸⁵

At renewal, as under the previous EEO rule, licensees would file the Broadcast Equal Employment Opportunity Program Report (FCC Form 396).⁸⁶ The Form 396 remains substantively unchanged from the one adopted under the previous EEO rule.⁸⁷ It contains the same information as the Mid-term Report, but in addition, requests (1) information regarding any pending discrimination complaints, and (2) a "narrative statement" which "demonstrates how the station achieved broad and inclusive outreach during" the preceding two years.⁸⁸ These procedures are intended to allow the Commission to "monitor [] developments" and offer "guidance and advice . . . to ensure achievement of [its] underlying goal of continuing implementation of effective EEO programs."⁸⁹

However, the FCC has not requested sufficient information at the mid-term to accomplish its stated purpose of continuing, effective EEO programs. For example, in requiring broadcasters

⁸³ *Second NPRM* at 13 ¶ 42.

⁸⁴ *Second NPRM* at 13 ¶ 41.

⁸⁵ *Second NPRM* at 13 ¶ 42.

⁸⁶ *Second NPRM* at 14 ¶ 46.

⁸⁷ *Id.*

⁸⁸ See Federal Communications Commission, *Broadcast Equal Employment Opportunity Program Report (FCC Form 396)* (2000), available at <http://www.fcc.gov/formpage.html> (last visited Apr. 11, 2002).

⁸⁹ *Second NPRM* at 13 ¶ 43.

to submit the narrative statement only once every eight years (and covering only the previous two years), the Commission will have no information showing whether and how the broadcaster achieved broad and inclusive outreach for the other six years. Further, the public and the Commission will not be able to monitor a broadcaster's overall EEO compliance if it only learns of pending discrimination complaints once every eight years. Thus, NOW *et al.* propose that licensees be required to file the same information that is filed at renewal, *i.e.*, in Form 396, for the mid-term review as well.⁹⁰

Additionally, under the proposed requirements, broadcasters need attach public file reports for only the previous year. Thus, for smaller radio stations, the FCC will have complete information about the number of jobs filled, the recruitment sources used to fill those vacancies, the sources utilized, and description of supplemental activities for only one out of eight years in a license term. For larger radio and television stations, it will have this information for only two out of eight years. NOW *et al.* are concerned that broadcasters may disregard the EEO outreach requirements for those six or seven years when they are not required to file reports.⁹¹ Therefore, NOW *et al.* request that the Commission require licensees to attach the public file reports for all of the preceding four years (in the case of stations that file mid-term reports) or eight years (for those that do not file mid-term reports).⁹² Because broadcasters must prepare the public file

⁹⁰ For cable entities, NOW *et al.* agree with the Commission that it should retain the requirement that mandates cable entities file Supplemental Investigation Sheets (SIS) once every five years. *See Second NPRM* at 14 ¶ 45. Further, NOW *et al.* agree that the Model EEO Program Report (FCC Form 396-A) should be filed by applicants for new broadcast stations or for assignment/transfer of an existing station to provide preliminary information as to the EEO program they intend to implement. *See Second NPRM* at 14 ¶ 46.

⁹¹ If broadcasters and cable entities ignore the EEO requirements for six or seven years, the Commission's goal of continuing, meaningful EEO programs will not be achieved. *See Second NPRM* at 13 ¶ 37.

⁹² Likewise, the statement affirming compliance, narrative, and disclosure of pending discrimination complaints should cover the same period of time. Of course, if the Commission adopts NOW *et al.*'s proposal to post the annual public file reports on the Commission's web site each year, the Commission would not need to extend the four year reporting requirement to the public file reports.

reports every year, submitting copies of those reports along with the Form 396 or 397 would impose no appreciable burden.

D. The Commission Should Reinstate Requirements that Broadcast and Cable Entities Maintain Recruiting and Outreach Documentation, Including Information on Recruitment Sources of Applicants, Interviewees, and Hires

The Commission has proposed that broadcasters and cable entities keep but not routinely submit certain records documenting recruiting efforts and compliance with supplemental recruitment measures.⁹³ The specific information proposed to be kept is similar to that required under former Option A, except that Option A required licensees to also keep information as to the recruitment source for each interviewee as well as each hire.⁹⁴ As the Commission notes, an “employment unit must be able to demonstrate that it in fact took the steps required by our rules.”⁹⁵ As such, the Commission seeks comment on whether it should also “require employment units to track the recruitment sources of their interviewees and/or hires.”⁹⁶

If the Commission adopts NOW *et al.*’s proposals to expand the annual public file reports,⁹⁷ only a small amount of additional information would need to be kept by licensees. This information would include dated copies of advertisements, documentation of all supplemental outreach activities, and the date each job was filled. If the Commission does not adopt NOW *et al.*’s public file proposal, at the very least, it should require that broadcasters and cable entities keep information as to the recruitment source for each interviewee and applicant as well as for each hire. Comprehensive recordkeeping of this sort would facilitate licensee self-

⁹³ *Second NPRM* at 5-6 ¶ 16, 11 ¶ 32. This information includes: (1) all full-time jobs filled, (2) the recruitment sources used to fill each vacancy, (3) the address, contact person and telephone number of each recruitment source, (4) dated copies of all advertisements, letters, e-mails, faxes, etc. used to fill each vacancy, (5) documentation necessary to demonstrate performance of supplemental outreach activities, (6) the total number of interviewees for each vacancy, and (7) the date each job was filled.

⁹⁴ *Report and Order*, 15 FCC Rcd at 2364-65 ¶ 78.

⁹⁵ *Second NPRM* at 11-12 ¶ 32.

⁹⁶ *Id.*

⁹⁷ *See supra* Section II. A.

assessment, expose deficient outreach in the case of an audit, and resolve questions of fact where a licensee's efforts have been questioned.

E. The Commission Should Conduct Random Audits as a Supplement to Public Participation

The Commission seeks comment on ways to reduce burdens while meaningfully enforcing its EEO requirements, noting that “one alternative might be to rely entirely on random audits by the Commission without requiring the filing of periodic reports.”⁹⁸ NOW *et al.* oppose sole reliance on audits. The Commission has presented no evidence demonstrating that sole reliance on audits would be effective. Indeed, it has not even stated how, or when, or how often such audits might take place. At the same time, putting the entire enforcement responsibility on the public is also problematic because of the burdens it imposes on the public to obtain and analyze the information and participate in Commission proceedings. Thus, NOW *et al.* support the use of random audits as an important supplement to reporting requirements and public participation.

III. EXPANSION OF THE COMMISSION'S EXEMPTIONS FOR SMALL EMPLOYMENT UNITS MAY THWART THE COMMISSION'S GOALS OF BROAD OUTREACH AND PRESERVATION OF THE ALREADY SCARCE ENTRY-LEVEL OPPORTUNITIES INTO THE BROADCAST INDUSTRY

Under the prior EEO rules, broadcast stations with less than five full-time employees and cable entities with less than six full-time employees were exempt from the EEO outreach activities.⁹⁹ The Commission has sought comment on whether the Commission should extend the threshold for this exemption to those broadcasters and cable entities with ten or fewer full-time employees.¹⁰⁰

⁹⁸ *Second NPRM* at 14 ¶ 43.

⁹⁹ *Second NPRM* at 15 ¶ 48.

¹⁰⁰ *Id.*

Sections 334 and 634 of the Communications Act prohibit any raise in this small unit exemption threshold. Moreover, even if the Commission had the legal authority to change the threshold, raising it would exclude a large number of broadcasters and cable entities that provide pivotal experience and opportunities to new individual entrants, and thus stifle the Commission's goal of broad outreach.

A. The Communications Act Prohibits the Commission from Raising the Small Employment Unit Exemption Threshold

Section 334 of the Communications Act, enacted in 1992 as part of the Cable Television Consumer Protection and Competition Act, explicitly prohibits the Commission from revising the regulations or forms concerning equal employment opportunity applicable to television licensees and permittees.¹⁰¹ According to the accompanying Conference Report, Section 334 “codifie[d] the Commission’s equal employment opportunity rules.”¹⁰² The codified section and relevant forms of the Commission’s 1992 rules contained comprehensive EEO regulations, including a broadcaster threshold exemption level of fewer than five full-time employees.¹⁰³

Despite this Congressional endorsement and codification, in 1998, the D.C. Circuit invalidated the Commission’s former EEO rule in *Lutheran Church* finding the race and gender-based statistical comparison between a broadcaster’s workforce and the local population unconstitutional.¹⁰⁴ In response, the Commission modified the EEO rule for the only time since Section 334’s adoption, eliminating those provisions found unconstitutional. However, the Commission noted that Section 334 prevents it from revising requirements not invalidated by the

¹⁰¹ 47 U.S.C. § 334(a)(1)-(2) (2001). See Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460, § 22(f) (1992).

¹⁰² H.R. Conf. Rep. No. 10-862, at 97 (1992), reprinted in 1992 U.S.C.C.A.N. 1231, 1279.

¹⁰³ See Implementation of Section 22 of the Cable Television Consumer Protection and Competition Act of 1992, Report and Order, 8 FCC Rcd 5389, 5389-90 ¶ 2-3 (1993).

¹⁰⁴ *Lutheran Church*, 141 F.3d at 351-52.

court¹⁰⁵ and further acknowledged that, “in light of Section 334 of the Act, [it does] not have the authority to extend [the threshold for] television stations with five to ten employees.”¹⁰⁶ Thus, as the Commission admits, absent Congressional or judicial intervention, Section 334 restricts the Commission from raising the exemption threshold applicable to television broadcasters beyond the threshold codified in 1992.

Likewise, Section 634 of the Communications Act bars the Commission from raising the threshold applicable to cable entities. Enacted in 1984, Section 634 applies detailed EEO outreach requirements to “any corporation, partnership, association, joint-stock company, or trust engaged primarily in the management or operation of any cable system,”¹⁰⁷ specifically instructing the Commission to implement rules which, in part, require cable entities to “disseminate [their] equal opportunity program to job applicants”¹⁰⁸ and “use . . . potential sources of minority and female applicants [] to supply referrals whenever jobs are available.”¹⁰⁹ In 1992, Congress extended these requirements to “any multichannel video programming distributor.”¹¹⁰ Thus, the Commission does not have the legal authority to exempt any cable

¹⁰⁵ “Although, as discussed above, [the Commission does] not believe that Section 334 prevents [it] from adopting new EEO program requirements to replace those invalidated by the court in *Lutheran Church*, that section does prevent [it] from revising the nondiscrimination requirement, which was not invalidated, as applied to television licensees.” *Report and Order*, 15 FCC Rcd at 2389 ¶ 149.

¹⁰⁶ *Report and Order*, 15 FCC Rcd at 2381, n. 195. Earlier, in 1996, when inquiring about potential streamlining options, the Commission recognized, “any . . . proposals for . . . exemption proposed by the public which require the revision of EEO regulations and/or forms for television stations would require statutory change.” Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission’s Rules to Include EEO Forfeiture Guidelines, *Order and Notice of Proposed Rulemaking*, 11 FCC Rcd 5154, 5167 ¶ 27 (1996), *recon. denied* 11 FCC Rcd 17,185 (1996).

¹⁰⁷ 47 U.S.C. § 554(a) (2001). See Cable Telecommunications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (1984).

¹⁰⁸ 47 U.S.C. § 554(d)(2)(A) (2001).

¹⁰⁹ 47 U.S.C. § 554(d)(2)(B) (2001).

¹¹⁰ Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460, §22(e) (1992).

entity from “establish[ing], maintain[ing], and execut[ing] a positive continuing program of specific practices designed to ensure equal opportunity,”¹¹¹ including the outreach requirements.

Furthermore, Section 634 requires cable entities “with more than 5 full-time employees to file with the Commission an annual statistical report.”¹¹² This report “shall include information on hiring, promotion, and recruitment practices necessary for the Commission to evaluate the efforts of entities to comply with the [Commission’s implementing rules].”¹¹³ The House Report accompanying the 1984 Act further explains that the Committee, by broadly defining the scope of Section 634’s application, “endorse[d] the Commission’s current practice of reviewing compliance with EEO standards by cable systems and other employment units with more than 5 employees.”¹¹⁴ Thus, Congressional directives mandate reporting by those cable entities with six or more employees.

B. Raising the Threshold Would Unnecessarily Exclude a Large Number of Stations with Entry-Level Opportunities from the Outreach Requirements

Even if the Commission had the legal authority to raise the threshold, it should not do so as nearly half of the broadcasters and over half of the cable entities have fewer than ten employees.¹¹⁵ If the Commission were to raise the threshold to ten or fewer employees, the outreach requirements would not apply to a large percentage of employment units, and thus the Commission’s goal of broad outreach would not be met.

¹¹¹ 47 U.S.C. § 554(c) (2001). As the Commission acknowledges, “[Section 634] requires that each cable operator establish a program to ensure equal employment opportunities.” Amendment of Part 76 of the Commission’s Rules to Implement the Equal Employment Opportunity Provisions of the Cable Communications Policy Act of 1984, *Report and Order*, 102 FCC 2d 562, 563-64 ¶ 2 (1985).

¹¹² 47 U.S.C. § 554(d)(3)(A) (2001).

¹¹³ 47 U.S.C. § 554(d)(3)(B) (2001).

¹¹⁴ H.R. Rep. No. 98-934, at 86 (1984), *reprinted in* 1984 U.S.C.C.A.N. 4655, 4723.

¹¹⁵ Forty-seven percent of broadcasting establishments have under ten employees, and fifty-six percent of cable establishments have under ten employees. Specifically, a raise in the threshold would exclude an additional eighteen percent of broadcasters and sixteen percent of cable entities from the outreach requirements. U.S. Census Bureau, U.S. Department of Commerce, *United States County Business Patterns* at 99 (1999), *available at* <http://www.census.gov/prod/www/abs/cbptotal.html> (last visited Apr. 11, 2002).

Further, smaller market broadcast stations, which likely have fewer employees, still provide the greatest job opportunities for inexperienced applicants.¹¹⁶ These stations serve a pivotal role in terms of equal opportunity, providing many with the skills and experience they need to compete for positions throughout the broadcast industry.¹¹⁷ As such, EEO outreach programs and initiatives are even more necessary and important at these smaller stations. In fact, the Commission rejected an increase the threshold less than two years ago, finding that smaller stations serve an “important role in providing entry-level opportunities into the broadcast industry.”¹¹⁸

C. Raising the Threshold Would Not Withstand Judicial Review

If the Commission nonetheless decides to raise the threshold, its decision will likely be overturned on appeal. In *United Church of Christ*,¹¹⁹ the Second Circuit invalidated an increase in the threshold nearly identical to the one in the Commission’s current proposal finding the increase arbitrary and capricious. The court determined that the Commission must articulate a reasoned explanation for any change in the application of existing regulations and rejected the Commission’s proffered explanations, which included the (1) more effective use of limited resources, (2) lack of need to enforce the rule as to stations with few employees, (3) excessive filing burden on small stations, and (4) continued coverage of most employees under the new

¹¹⁶ See Bureau of Labor Statistics, U.S. Department of Labor, *Career Guide to Industries: Radio and Television Broadcasting* (2002-2003 Career Guide), available at <http://www.bls.gov/oco/cg/cgs019.htm> (last visited Apr. 11, 2002); *Comments of American Federation of Television and Radio Artists In the Matter of Review of the Commission’s Broadcast and Cable Equal Employment Opportunity Rules and Termination of the EEO Streamlining Proceeding*, MM Docket No. 98-204, at 5 of Attachment (1999) [hereinafter *Comments of AFTRA*]; *Comments of American Women in Radio & Television, Inc. In the Matter of Review of the Commission’s Broadcast and Cable Equal Employment Opportunity Rules and Policies and Termination of the EEO Streamlining Proceeding*, MM Docket No. 98-204, at 10 (1999) [hereinafter *Comments of AWRT*].

¹¹⁷ See *Comments of AFTRA* at 5 of Attachment; *Comments of AWRT* at 10.

¹¹⁸ *Report and Order*, 15 FCC Rcd at 2380-81 ¶ 126.

¹¹⁹ *Office of Communications of the United Church of Christ v. FCC*, 560 F2d. 529 (2d Cir. 1977).

policy, as either inadequate or unsupported.¹²⁰ The Commission has not now raised any substantial justifications for an increase beyond those already rejected by the court. Indeed, the Commission recently found that raising the threshold was “ill-advised.”¹²¹ Moreover, the proposed reporting requirements do not pose undue burdens on small stations.¹²² Thus, the Commission should not raise the threshold.

IV. STATUTORY REQUIREMENTS PROHIBIT THE COMMISSION FROM REVISING THE ANNUAL EMPLOYMENT REPORTS, WHICH ARE ESSENTIAL FOR ANALYZING INDUSTRY TRENDS AND ASSESSING THE EFFECTIVENESS OF EEO OUTREACH

Although not part of the EEO rule, the Commission proposes to retain Section 73.3612, which requires that broadcast stations file an Annual Employment Report (FCC Form 395-B), and Section 76.77(a), which requires that cable entities file a comparable report (FCC Form 395-A or FCC Form 395-M).¹²³ These forms list the number of employees by job category, ethnicity, and gender.¹²⁴ The Commission states that this employment information will be used solely for analyzing industry trends and reporting to Congress¹²⁵ and further notes that nothing in the Court’s decision in *Association* suggests that the collection of this information is

¹²⁰ *Id.* at 533-35.

¹²¹ *Report and Order*, 15 FCC Rcd at 2380-81 ¶ 126.

¹²² NOW *et al.*’s proposal provides the same relief the Commission deemed sufficient in 2000, requiring small stations complete only two supplemental activities every two years. *Report and Order*, 15 FCC Rcd at 2380-81 ¶ 126. Moreover, in the 2000 proceeding, “[the Commission] believe[d] that a total exemption [was] unnecessary since the new EEO Rule streamline[d] and clarifie[d] recordkeeping requirements” *Report and Order*, 15 FCC Rcd at 2432-33 Appendix B, Section E. NOW *et al.*’s proposed requirements closely resemble those requirements adopted in 2000, sharing the same clarity and efficiency and even reducing the number of filings. *See supra* Sections II and III of NOW *et al.*’s Comments.

¹²³ *Second NPRM* at 16 ¶ 51, 52.

¹²⁴ *See* Federal Communications Commission, *Broadcast Station Annual Employment Report (FCC Form 395-B)* (2000), available at <http://www.fcc.gov/formpage.html> (last visited Apr. 11, 2002); Federal Communications Commission, *Cable Television Annual Employment Report (FCC Form 395-A)* (2000), available at <http://www.fcc.gov/formpage.html> (last visited Apr. 11, 2002); Federal Communications Commission, *Multi-Channel Video Program Distributor Annual Employment Report (FCC Form 395-M)* (2000), available at <http://www.fcc.gov/formpage.html> (last visited Apr. 11, 2002).

¹²⁵ *See* FCC Broadcast Radio Services, 47 C.F.R. §73.3612 (2001); *Second NPRM* at 16 ¶ 50; *Recon*, 15 FCC Rcd at 22558 ¶ 35; *Report and Order*, 15 FCC Rcd at 2394-95 ¶ 164-65.

unconstitutional.¹²⁶ Nonetheless, the Commission requests comment on whether the forms can or should be revised and specifically about whether it should allow anonymous submissions.¹²⁷

NOW *et al.* strongly support retention of the existing reports (Forms 395-B, 395-A, and 395-M). Collection of the employment data in these forms is both statutorily mandated and necessary to assess the effectiveness of the new EEO rule and to determine industry trends as required by Congress.¹²⁸ To ensure the accuracy of this data, the Commission should not permit the forms to be filed anonymously.

Enacted in 1992, Section 334 of the Communications Act prohibits revision of “the forms used by [television] licensees and permittees to report pertinent employment data to the Commission.”¹²⁹ The accompanying Conference Report plainly states that Section 334 “incorporates into the Communications Act . . . FCC Form 395-B annual employment report,”¹³⁰ and details the conferees’ intent that the form be filed “in the same manner, with the same format and content and same terms and conditions as in effect [in 1992].”¹³¹ With the exception of minor alterations, the current Form 395-B remains the same as it was in 1992.¹³² Thus, Section

¹²⁶ *Second NPRM* at 16 ¶ 51.

¹²⁷ *Id.*

¹²⁸ *See* Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460, § 22(g) (1992) (“Not later than 2 years after the date of enactment of this Act, the Commission shall submit to the Congress a report In conducting such review, the Commission shall consider the effectiveness of its procedures, regulations, policies, standards, and guidelines in promoting equality of employment opportunity and promotion opportunity The Commission shall forward to the Congress such legislative recommendations to improve equal employment opportunity in the broadcasting and cable industries as it deems necessary.”). The Commission confirmed this responsibility stating, “Congress clearly contemplated continued Commission monitoring of employment trends.” Brief for Respondents at 50, *MD/DC/DE Broadcasters Association v. FCC*, 236 F.3d 13 (D.C. Cir. 2001) (Nos. 00-1094, 00-1198), *citing Report and Order*, 15 FCC Rcd at 2395 n.262, *citing* H.R. Rep. No. 102-628, at 111-112 (1992).

¹²⁹ 47 U.S.C. § 334(a)(2) (2001).

¹³⁰ H.R. Conf. Rep. No. 102-862, at 97 (1992), *reprinted in* 1992 U.S.C.C.A.N. 1231, 1279.

¹³¹ *Id.*

¹³² The FCC has revised its Form 395-B only technically since 1992. *See e.g.*, Establishment of a Class A TV Service; Correction, 65 Fed. Reg. 34405, 34406 (May 30, 2000); Establishment of a Class A TV Service, 65 Fed. Reg. 29985, 30006 (May 10, 2000); Revision of Broadcast and Cable EEO Rules and Policies, 65 Fed. Reg. 7448, 7454 (Feb. 15, 2000).

334 “require[s] the collection of annual employment data”¹³³ and prohibits any modification of the Annual Employment Report (Form 395-B).

Section 634 of the Communications Act adopted in 1984, explicitly requires cable entities “with more than 5 full-time employees to file with the Commission an annual statistical report identifying by race, sex, and job title the number of employees in each of [a number of] full-time and part-time job categories.”¹³⁴ With Section 634, Congress “codifie[d] and strengthen[ed] the Commission’s existing equal employment opportunity regulations,”¹³⁵ applying the regulations to cable entities. The codified 1984 rule required that each station with five or more employees “file an annual employment report with the FCC.”¹³⁶ The current forms 395-A and 395-M collect the data specifically required by Section 634,¹³⁷ thereby executing the provisions of Section 634. Thus, as the Commission has acknowledged, Section 634 “preclude[s] a change” in the annual filing of the employment report for cable entities.¹³⁸

Even if the filing of these forms was not mandated by statute, they are essential to assessing the effectiveness of EEO outreach and determining industry trends as is Congressionally required.¹³⁹ Further, as the Commission noted previously, an annual filing of the employment reports is necessary to ensure reasonably current data, especially in light of the

¹³³ *Recon*, 15 FCC Rcd at 22560 ¶ 42. “The Commission is required by statute to collect employment data for the television ... industr[y].” *NPRM*, 13 FCC Rcd at 23023 ¶49.

¹³⁴ 47 U.S.C. § 554(d)(3)(A) (2001). Congress extended this requirement to multi-channel video programming distributors in 1992. Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460, § 22(e) (1992).

¹³⁵ H.R. Rep. No. 98-934, at 86 (1984), *reprinted in* 1984 U.S.C.C.A.N. 4655, 4723.

¹³⁶ *See* Reregulation of Radio & Television Broadcasting, 44 Fed. Reg. 38481, 38511 (July 2, 1979) (codified at C.F.R. pt. 73).

¹³⁷ *See* 47 U.S.C. § 554(d)(3) (2001).

¹³⁸ *Recon*, 15 FCC Rcd at 22560 ¶42. *See also Second NPRM* at 16 ¶¶ 51-52; *Report and Order*, 15 FCC Rcd at 2358 ¶¶ 63-64. “The Commission is required by statute to collect employment data for the ... cable industr[y].” *NPRM*, 13 FCC Rcd at 23023 ¶49.

¹³⁹ *Supra* note 128. *See Recon*, 15 FCC Rcd at 22558 ¶ 35; *Report and Order*, 15 FCC Rcd at 2394-95 ¶ 164; *NPRM*, 13 FCC Rcd 23004, 23023 ¶ 49.

large number of station sales that have taken place in recent years.¹⁴⁰ Finally, the Commission has recognized that the forms do not impose an undue burden on broadcasters or cable entities.¹⁴¹

Because the statute prohibits modifications of the Forms 395-B, 395-A, and 395-M, and broadcasters and cable entities reveal their identities on the current forms, the Commission lacks the authority to allow anonymous submissions. And, even if the Commission had the authority to allow anonymous submissions, such filings would not achieve the Commission's desired goals. As the Commission has determined, "[anonymous filing] would afford [the Commission] no way of enforcing the reporting requirement, and thus would completely undermine the integrity of the data collection program,"¹⁴² making industry trend analysis and accurate reporting to Congress impossible. Moreover, the Freedom of Information Act (FOIA)¹⁴³ and the Federal Records Act (FRA)¹⁴⁴ prohibit any variation of anonymous filing, such as a "tear-off" procedure, because, in implementing the procedure, the Commission would have to both

¹⁴⁰ *Recon*, 15 FCC Rcd at 22560 ¶ 42.

¹⁴¹ "[T]he filing of [the annual employment] data is not unduly burdensome." *Recon*, 15 FCC Rcd at 22560 ¶ 42. Broadcasters have been routinely completing the three page form for over thirty years, and the Commission has estimated that each response should only take from ten minutes to an hour. See Federal Communications Commission, *Broadcast Station Annual Employment Report FCC Form 395-B* (2000), available at <http://www.fcc.gov/formpage.html> (last visited Apr. 11, 2002). See Federal Communications Commission, *Instructions for Completion of FCC Form 395-B Broadcast Station Annual Employment Report 3* (2000), available at <http://www.fcc.gov/formpage.html> (last visited Apr. 11, 2002).

¹⁴² *Recon*, 15 FCC Rcd at 22559-60 ¶ 39. See also Brief for Respondents at 50, *MD/DC/DE Broadcasters Association v. FCC*, 236 F.3d 13 (D.C. Cir. 2001) (Nos. 00-1094, 00-1198) (stating that anonymous submissions "would make the data collection process essentially unenforceable and would make the data collected highly suspect if not completely worthless").

¹⁴³ Freedom of Information Act, 5 U.S.C. § 552 (2001). "Under [FOIA], [the Commission] would not be able to withhold the complete filing [including the identity of the filer] from members of the public during [the] initial review period" *Recon*, 15 FCC Rcd at 22559-60 ¶ 39.

¹⁴⁴ Federal Records Act, 44 U.S.C. §§ 2101-2118, 2501-2506, 2701-2706, 2901-2909, 3101-3107, 3301-3322 (2001). "Under [FRA], [the Commission] cannot 'alienate or destroy' any information that is an integral part of an agency record except in compliance with the FRA's provisions. [The Commission] believe[d] that the identity of the filer would be considered an integral part of the employment report that could not be severed from the employment statistics under the FRA. *Recon*, 15 FCC Rcd at 22559-60 ¶ 39, citing *Armstrong v. Executive Office of the President*, 1 F.3d 1274, 1286 (D.C. Cir. 1993) (An agency violated the FRA by preserving only paper records of the text of e-mail messages which did not show who sent the document, who received it, and when it was received because the missing information was integral part of the agency record that the agency lacked discretion to "lop off").

withhold filed information from the public and destroy information integral to the employment report.¹⁴⁵

V. NOW *ET AL.* SUPPORT THE COMMISSION’S PROPOSAL TO RECODIFY ANTI-DISCRIMINATION PROVISIONS IN THE BROADCAST EEO RULES

NOW *et al.* endorse the Commission’s proposal to recodify the anti-discrimination provision, concurring that the anti-discrimination provision “is an essential component of every licensee’s obligation as a trustee of a valuable public resource.”¹⁴⁶

VI. CONCLUSION

For the above stated reasons, NOW *et al.* urge the Commission to adopt the proposals stated herein. Further, NOW *et al.* look forward to participating in an *en banc* hearing as soon as possible to discuss these important issues with the Commission.¹⁴⁷

Respectfully submitted,

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¹⁴⁵ The Commission promptly rejected the NAB suggested “tear-off” procedure in the last proceeding. *See Recon*, 15 FCC Rcd at 22559-60 ¶¶ 38-39. The procedure entails “the Commission [designing] a form that utilizes a “tear-off” sheet that separates the identity of a station with the data after the Commission verifies that the station has filed its form.” *Petition for Partial Reconsideration and Clarification of the National Association of Broadcasters*, MM Docket No. 98-204, at 16 (2000).

¹⁴⁶ *Second NPRM* at 7 ¶ 18.

¹⁴⁷ *See Second NPRM*, Separate Statement of Commissioner Michael J. Copps.